

**LEGISLATIVE SERVICES AGENCY  
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**FISCAL IMPACT STATEMENT**

**LS 6319**

**BILL NUMBER:** HB 1129

**NOTE PREPARED:** Apr 5, 2005

**BILL AMENDED:** Mar 17, 2005

**SUBJECT:** Inheritance Tax and Will Depository.

**FIRST AUTHOR:** Rep. Foley

**FIRST SPONSOR:** Sen. Zakas

**BILL STATUS:** As Passed Senate

**FUNDS AFFECTED:** ☒ **GENERAL**  
☒ **DEDICATED**  
☐ **FEDERAL**

**IMPACT:** State & Local

**Summary of Legislation:** (Amended) The bill allows a person to deposit a will with the circuit court clerk of the county in which the testator resided when the will was executed. The bill requires the circuit court clerk to collect a \$25 fee for depositing the will, unless the circuit court clerk waives the fee. The bill makes fee waiver mandatory if the depositor is participating in a Supreme Court program, and permits fee waiver if the depositor is an attorney who will no longer practice law.

The bill provides that an individual adopted as an adult is to be treated as the natural child of the adopting parent for purposes of the Inheritance Tax if the adoption was finalized before July 1, 2004. (Current law requires an individual to be adopted before being emancipated to be treated as the natural child of the adopting parent.) The bill specifies that a stepchild of the transferor is a Class A beneficiary for purposes of the Inheritance Tax, whether or not the stepchild is adopted by the transferor. The bill provides that a lineal descendant of a stepchild of a transferor, whether or not the stepchild is adopted by the transferor, is a Class A transferee for purposes of the Inheritance Tax. (The introduced version of this bill was prepared by the Probate Code Study Commission.)

**Effective Date:** July 1, 2004 (retroactive); July 1, 2005.

**Explanation of State Expenditures:** *Exemption Changes:* The bill could potentially increase expenditures from the state General Fund for county Inheritance Tax replacement to the extent that the exemption changes cause county Inheritance Tax collections to fall below the current guarantee level. Currently, most counties retain more in Inheritance Tax revenues than is guaranteed under the replacement procedure. (See *Explanation of Local Revenues*, below, for an explanation of county replacement procedures.)

**Explanation of State Revenues: *Stepchildren/Adopted Children:*** The bill extends Class A beneficiary status to: (1) a lineal descendant of a stepchild of a decedent; and (2) a person adopted by a decedent after that person was emancipated, provided the adoption was finalized before July 1, 2004. The change would increase the Inheritance Tax exemption for these people from \$100 to \$100,000. These two changes could potentially reduce revenue from the Inheritance Tax beginning in FY 2006. However, Inheritance Tax return data on Class C transferees does not indicate the precise relationship of the transferee to the decedent. Thus, the frequency of transfers to persons described in (1) and (2) above, and the potential fiscal impact of these transfers, is indeterminable. From July 1997 to September 2003, an average of 6,900 Class C transferees paid Inheritance Tax each year. The median value of property transfers to Class C transferees during this period was about \$8,600, with the median tax totaling about \$853.

The bill also clarifies current statute by specifying that stepchildren are Class A beneficiaries whether or not they are adopted by the decedent.

*Background:* Current law provides a \$100,000 exemption under the Inheritance Tax for Class A beneficiaries - lineal descendants, lineal ancestors, stepchildren, and legally adopted children of a decedent. In the case of an adopted child, the adoption must have occurred before the individual was totally emancipated. Class A beneficiary status also applies to children of a decedent who have been part of a *loco parentis* relationship for at least 10 years where the relationship began before the child's 15th birthday. The bill expands the definition of a Class A beneficiary to include a lineal descendant of a stepchild and an adopted child where the adoption occurred after the individual was totally emancipated, provided the adoption was finalized before July 1, 2004. These individuals are Class C beneficiaries under current law, entitled to a \$100 exemption. The bill also clarifies current law status of stepchildren by specifying that stepchildren are Class A beneficiaries whether or not they are adopted. These changes apply to estates of decedents who die after June 30, 2004. Since the Inheritance Tax does not have to be paid until a maximum of 12 months after the decedent's death (within 9 months of the date of death to receive the 5% early payment discount), the potential impact of these changes is not expected to begin until FY 2006. The nonresident Inheritance Tax and 92% of the resident Inheritance Tax is deposited in the state General Fund.

**Explanation of Local Expenditures: *Will Depository:*** The bill allows a person to deposit a will with the circuit court clerk of the county in which the testator resided when the will was executed. The bill specifies requirements for the circuit court clerk with regard to receiving and maintaining the will. Under the bill, the will must be maintained by the circuit court clerk for not less than 100 years.

**Explanation of Local Revenues: *Exemption Changes:*** The bill could potentially reduce Inheritance Tax revenue flowing to counties. However, the precise impact of the bill is indeterminable. The counties retain 8% of the Inheritance Tax collected on transfers made by Indiana residents. Counties are guaranteed a statutorily determined amount as determined by the replacement provision established by P.L. 254-1997. The replacement provision was established to replace county Inheritance Tax revenue lost when the Class A exemption was increased on July 1, 1997. The replacement provision guarantees that each county receives Inheritance Tax revenue equal to the five-year annual average amount of Inheritance Tax received by that county from FY 1991 to FY 1997 excluding the highest and lowest years.

Currently, most counties retain more in Inheritance Tax revenues than is guaranteed under the replacement procedure. From FY 2000 to FY 2003, counties exceeded their guarantee amounts by an average of \$4.7 M annually with shortages subject to replacement averaging about \$200,000 per year. The total annual guarantee to counties is \$7.4 M. As a result, some reductions in county revenue exceeding the guarantee amount will not

be replaced by the state.

A copy of the spreadsheet showing the amount of Inheritance Tax replacement guaranteed to each county under P.L. 254-1997 is available from the Office of Fiscal and Management Analysis.

(Revised) *Will Depository*: The bill requires the circuit court clerk to collect a \$25 fee for the deposit of a will with the clerk's office. However, the bill requires the circuit court clerk to waive the fee if the probate court certifies that the depositor deposits the will as a participant, or for a participant, in a program of the Indiana Supreme Court, including the Judges and Lawyers Assistance Program. The fee for depositing a will would also be required to be waived if the depositor no longer practices law. The bill requires the circuit court clerk to deposit the fees in the clerk's Records Perpetuation Fund established under current statute. Under current statute this fund contains money to be used by the circuit court clerk for the preservation of records and the improvement of record keeping systems and equipment. The potential number of wills that might be deposited with circuit court clerks, and the amount of fees that could potentially be generated is indeterminable.

**State Agencies Affected:** Department of State Revenue.

**Local Agencies Affected:** Counties, Circuit Court Clerk, Probate Court.

**Information Sources:** OFMA Inheritance Tax database.

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